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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/671,175   | 09/24/2003  | Stacy W. Stephens    | STEPHENS-010        | 7003             |
| 31025  | 7590        | 05/05/2004           | EXAMINER            |                  |
| H. BROCK KOLLS<br>1573 POTTER DRIVE<br>POTTSTOWN, PA 19464 |             |                      | RICCI, JOHN A       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3712                |                  |

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/671,175

**Applicant(s)**

STEPHENS, STACY W.

**Examiner**

John Ricci

**Art Unit**

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20 is/are allowed.
- 6) ☒ Claim(s) 1,4,7 and 14 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,6,8-13,15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

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Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not permissible to use trademarks in claims, because the manufacturer may change the nature of the product without changing the name, thus changing the scope of the claim.

\* \* \* \* \*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the positioning actuator which is a cam or solenoid (claim 4), and the control system which is able to position the pinch plate (claims 8, 11, 12), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

\* \* \* \* \*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, & 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Ross 5,826,568.

Van Ross shows a pitching machine including a pinch plate 34, and a positioning actuator support leg 38 to adjust the position of the pinch plate. There is also a control system 24, 26.

\* \* \* \* \*

Claims 17-20 are allowed.

Claims 2, 3, 5, 6, 8-13, 15, & 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

\* \* \* \* \*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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\* \* \* \* \*

This letter was prepared by Examiner John Ricci, who can be reached at:

Voice: 703-308-4751

Fax: Use 703-872-9306 for papers to be delivered directly to the mail room, like formal amendments and responses, change of address, power of attorney, petitions.

Use 703-783-0439 for papers to be delivered directly to the Examiner, like informal or proposed responses for discussion, or notes in preparation for an interview.

*Response by Fax is encouraged to reduce mail processing time. Please don't send duplicate papers by mail and Fax.*

My supervisor is Derris Banks, 703-308-1745.

PTO main switchboard: 800-786-9199.

Visit our Web site at [www.uspto.gov](http://www.uspto.gov).



**JOHN RICCI  
PRIMARY EXAMINER  
ART UNIT 3712**